

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.5359 OF 2015

Omprakash and Co.

... Petitioner

v/s

Gangadhar Ramchandra Kowli
and others

... Respondents

Mr Karl Tamboly with Mr Nasir Ali Rizvi and Mr Kunal Parekh i/b
M/s Thakore Jariwalla and Associates for Petitioner.
Mr S.M. Shettigar for Respondent Nos.2 and 3.

CORAM : B.P. COLABAWALLA J.

DATE : 30TH NOVEMBER, 2018.

P.C. :-

1. This Writ Petition has been filed seeking to challenge the order dated 4th March 2015 passed by the Bombay City Civil Court at Bombay in Notice of Motion No.297 of 2014 in Suit No.8266 of 1084. By the impugned order, Notice of Motion 297 of 2014 filed by Defendant Nos.1, 3 and 4 was made absolute and they were permitted to file an additional written statement after the amendment of the plaint viz. bringing the legal heirs of Defendant No.5 on record. Mr Tamboly, learned counsel appearing on behalf of the Petitioner, submitted before me that this could not have been done for the simple reason that Defendant Nos.1, 3 and 4 have

already filed their written statement / additional written statement and merely by bringing the legal representatives of the deceased Defendant No.5 on record, did not give Defendant Nos.1, 3 and 4 to file a further written statement as that was only a formal amendment.

2. I am not impressed with this argument for the simple reason that section 105 of C.P.C. clearly provides that where a decree is appealed from, any error, defect or irregularity in any order, affecting the decision of the case, can be set for as a ground of objection in the Memorandum of Appeal. If for any reason, the Suit against the Petitioner is dismissed by the Trial Court, it will always be open to the Petitioner to challenge even the order impugned herein when he challenges the final decree of the Trial Court. This being the case, I do not think that it is necessary for me to entertain the Writ Petition at this stage under Article 227 of the Constitution of India.

3. The Writ Petition is accordingly dismissed. However, there shall be no order as to costs.

(B.P. COLABAWALLA J.)